

SURUHANJAYA PILIHAN RAYA MALAYSIA

A

v.

DATO' DR ABD ISA ISMAIL

COURT OF APPEAL, PUTRAJAYA

B

RAMLY ALI JCA

LINTON ALBERT JCA

AZIAH ALI JCA

[CIVIL APPEALS NO: W-01-386-2009 & W-02-2654-2009]

25 NOVEMBER 2011

C

ADMINISTRATIVE LAW: *Judicial review - Certiorari and mandamus - Appeal against - State Assembly - Declaration of vacant seat- Whether proved - Whether Election Commission compelled to hold by-election - Whether Assemblyman had been absent from two consecutive State Assembly meetings - Whether the two meetings were in one session or in separate sessions of State Assembly - Whether learned judge erred in according plain and ordinary meaning to phrase 'two consecutive meetings' - Laws of the Constitution of Kedah, art. 2*

D

CONSTITUTIONAL LAW: *Legislature - State Assembly - Declaration of vacancy of seat - Whether proved - Whether Election Commission compelled to hold by-election - Whether Assemblyman had been absent from two consecutive State Assembly meetings - Whether the two meetings were in one session or in separate sessions of State Assembly - Whether learned judge erred in according plain and ordinary meaning to phrase 'two consecutive meetings' - Laws of the Constitution of Kedah, art. 2*

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CONSTITUTIONAL LAW: *Legislature - State Assembly - Proclamation to prorogue or dissolve - Whether discretion of His Royal Highness - Laws of the Constitution of Kedah, art. 53(1), (2)*

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WORDS AND PHRASES: *"Meetings" and "Sessions" - Definitions of - Whether 'two consecutive meetings' construed to mean two consecutive meetings in one session and not in separate sessions of State Assembly - Laws of the Constitution of Kedah, arts. 2, 51*

H

ADMINISTRATIVE LAW: *Judicial review - Remedies - Writ of quo warranto - Principles to be applied - Federal Constitution, art. 132(1), (3)*

I

- A The appellants, the Election Commission ('EC') and the State Assemblyman for the Kota Siputeh constituency in Kedah ("the ADUN") in Civil Appeals No: W-01-386-2009 and No: W-02-2654-2009 respectively, appealed against the decision of the High Court Judge made in an application for judicial review filed by the
- B Speaker of Kedah State Legislative Assembly ('the respondent'). Briefly, the ADUN had been absent for the meetings of the State Assembly on 19 April 2009 and 9 August 2009. The respondent took the position that these absences from two consecutive meetings of the Assembly were without leave of the respondent as
- C Speaker as required by art. 51 of the Constitution of Kedah ('the State Constitution') and that pursuant to the said article the Kota Siputeh State Seat had become vacant. Pursuant thereto the respondent informed the EC that there was a vacancy in the Kota Siputeh State Seat. The EC replied amongst others: (a) the seat
- D was not vacant and (b) the meetings which were not attended by the ADUN were not two consecutive meetings in one session within the meaning of art. 51 of the State Constitution but two meetings in different sessions. The EC's reply resulted in the application for judicial review. Against the EC, the respondent
- E sought for an order of *certiorari* to quash the EC's decision and an order of *mandamus* to compel the EC to hold a by-election for the Kota Siputeh State Seat. Against the ADUN, the respondent sought for, *inter alia*, a writ of *quo warranto* and a declaration that the ADUN was no longer the Kota Siputeh Assemblyman. The
- F learned judge agreed with the respondent and held that the ADUN's absences constituted absences for two consecutive meetings in the same session at the Assembly. Applying art. 51 of the State Constitution, the learned judge granted the declaratory order that the ADUN was no longer the Kota Siputeh
- G Assemblyman and that the Kota Siputeh State Seat was vacant. Consequently the learned judge granted an order of *mandamus* to compel the EC to issue a writ of election and to hold a by-election. Both the EC and the ADUN were dissatisfied with the decision of the learned judge. Hence these appeals. The
- H respondent, on the other hand, cross appealed against the learned judge's decision not to issue a writ of *quo warranto* against the ADUN.

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Held (allowing the appeals; setting aside order of the High Court) A

Per Aziah Ali JCA delivering the judgment of the court:

- (1) The learned judge had erred in according a plain and ordinary meaning to the phrase 'two consecutive meetings' as proposed by the respondent and construing the said phrase in isolation and without regard to the definitions of 'meetings' and 'sessions' as provided under art. 2. These provisions, when considered as a whole, would show that 'two consecutive meetings' must be construed to mean two consecutive meetings in one session and not in separate sessions of the State Assembly. The last sitting in one session is the Assembly's last meeting of that session and the first meeting in the next session is the Assembly's first meeting of the new session. Meetings can only consecutively exist in their respective sessions. The termination of a preceding session is an interruption of sequence. Thus, the meetings on 19 April 2009 and 9 August 2009 were not two consecutive meetings. There was an interruption in their succession in the form of the Proclamation dated 1 July 2009 which, in proclaiming that the meeting on 9 August 2009 would be the first meeting of the second session, had, in effect, terminated the first session of the assembly. The ADUN had not been absent for two consecutive meetings. Consequently, his seat had not become vacant. (paras 10 & 11) B C D E F
- (2) By the word 'shall' appearing in art. 53(1) of the State Constitution, an obligation is imposed on His Royal Highness ('HRH') to summon the Legislative Assembly for the first sitting of each session. However, for the prorogation or dissolution of the assembly, by the use of the word 'may' in art. 53(2), there is no similar obligation imposed on HRH. The issuance of a proclamation to prorogue or dissolve the assembly is at the discretion of the HRH. By the Proclamation on 1 July 2009, HRH in clear words had summoned the Legislative Assembly to its first meeting of the second session. The decision to appoint 9 August 2009 as the first meeting of the second session was the decision of HRH. That effect ought to be given to the clear words of the said Proclamation issued by HRH in exercise of his powers under art. 53. Neither the EC nor the court were at liberty to disregard the Royal Proclamation. To do so would be to negate the command of HRH. (paras 13-14) G H I

- A (3) The learned judge had declined to issue a writ of *quo warranto* against the ADUN on the ground that art. 132(3)(b) of the Federal Constitution expressly excluded the office of a member of the Legislative Assembly of a State from the category of 'public services' as enumerated under art. 132(1). This court was in full agreement with the learned judge, thus the respondent's cross appeal was dismissed. (para 15)

[ADUN to be reinstated to his position.]

C ***Bahasa Malaysia Translation Of Headnote***

- Perayu-perayu, Suruhanjaya Pilihan Raya ('SPR') dan Ahli Dewan Undangan Negeri untuk konstituensi Kota Siputeh di Kedah ('ADUN'), dalam Rayuan Sivil No: W-01-386-2009 dan No: W-02-2654-2009 masing-masing, merayu terhadap keputusan Hakim Mahkamah Tinggi yang dibuat di dalam permohonan semakan kehakiman yang difailkan oleh Speaker Dewan Undangan Negeri Kedah ('responden'). Secara ringkas, ADUN telah tidak menghadirkan diri di mesyuarat-mesyuarat Dewan Undangan Negeri pada 19 April 2009 dan 9 Ogos 2009. Responden telah mengambil pendirian bahawa ketidakhadiran mesyuarat-mesyuarat Dewan Undangan tersebut dua kali berturut-turut adalah tanpa kebenaran responden sebagai Speaker seperti yang diperlukan oleh fasal 51 Perlembagaan Negeri ('Perlembagaan Negeri') dan menurut fasal tersebut Kerusi DUN Kota Siputeh telah dikosongkan. Selaras dengan itu, responden memaklumkan kepada SPR bahawa terdapat kekosongan di dalam Kerusi DUN Kota Siputeh. SPR menjawab, antara lain: (a) kerusi itu tidak kosong dan (b) mesyuarat-mesyuarat yang gagal dihadiri oleh ADUN tidak diadakan dua kali berturut-turut di dalam satu sesi mengikut pengertian fasal 51 Perlembagaan Negeri tetapi adalah dua mesyuarat yang diadakan di dua sesi yang berlainan. Jawapan SPR telah menyebabkan permohonan semakan kehakiman. Terhadap SPR, responden memohon perintah *certiorari* untuk membatalkan keputusan dan perintah mandamus untuk memaksa SPR mengadakan pilihan raya kecil untuk Kerusi DUN Kota Siputeh. Terhadap ADUN, responden memohon, antara lain, writ *quo warranto* dan satu deklarasi bahawa ADUN bukan lagi ADUN Kota Siputeh. Yang arif hakim bersetuju dengan responden dan memutuskan bahawa ketidakhadiran ADUN adalah untuk dua mesyuarat berturut-turut di dalam sesi yang sama di mesyuarat

Dewan. Menggunapakai fasal 51 Perlembagaan Negeri, yang arif hakim telah memberi perintah pengisytiharan bahawa ADUN bukan lagi Ahli Dewan Undangan Negeri Kota Siputeh dan kerusi DUN Kota Siputeh adalah kosong. Oleh itu yang arif hakim telah membenarkan perintah *mandamus* untuk memaksa SPR mengeluarkan writ pilihan raya dan untuk mengadakan satu pilihan raya kecil. Kedua-dua SPR dan ADUN tidak puas hati dengan keputusan yang arif hakim. Oleh itu, rayuan-rayuan ini. Responden pula telah membuat rayuan balas terhadap keputusan yang arif hakim untuk tidak mengeluarkan writ *quo warranto* terhadap ADUN.

Diputuskan (membenarkan rayuan-rayuan; mengenyepikan perintah Mahkamah Tinggi)

Oleh Aziah Ali HMR menyampaikan penghakiman mahkamah:

- (1) Yang arif hakim khilaf apabila menurut maksud jelas dan biasa kepada frasa ‘dua mesyuarat berturut-turut’ seperti yang dicadangkan oleh responden dan mentafsirkan frasa tersebut secara berasingan dan tanpa mengambil kira takrif-takrif ‘mesyuarat’ dan ‘sesi’ seperti yang disediakan di dalam fasal 2. Peruntukan-peruntukan ini, apabila dipertimbangkan secara keseluruhan, menunjukkan bahawa ‘dua mesyuarat berturut-turut’ hendaklah ditafsirkan sebagai bererti dua mesyuarat berturut-turut di dalam satu sesi dan bukan dalam sesi berasingan mesyuarat Dewan Undangan. Persidangan terakhir di dalam satu sesi mesyuarat Dewan Undangan adalah mesyuarat terakhir bagi sesi tersebut dan mesyuarat pertama di dalam sesi akan datang adalah mesyuarat Dewan Undangan yang pertama di dalam sesi baru. Mesyuarat-mesyuarat hanya boleh wujud berturut-turut di dalam sesi masing-masing. Penamatan sesi sebelumnya merupakan satu gangguan urutan. Oleh itu, mesyuarat-mesyuarat pada 19 April 2009 dan 9 Ogos 2009 bukan dua mesyuarat berturut-turut. Terdapat gangguan pada turutan mereka dalam bentuk Pengisytiharan bertarikh 1 Julai 2009 di mana, di dalam mengisytiharkan bahawa mesyuarat 9 Ogos 2009 adalah mesyuarat pertama sesi kedua, telah, secara berkesannya, menamatkan sesi pertama mesyuarat Dewan Undangan. ADUN tidak boleh dikatakan tidak menghadirkan diri untuk dua mesyuarat berturut-turut. Oleh itu, kerusi DUN tersebut tidak menjadi kosong.

- A (2) Melalui perkataan 'shall' yang muncul di dalam fasal 53(1) Perlembagaan Negeri, kewajipan dikenakan ke atas Duli Yang Maha Mulia ('DYMM') untuk memanggil Dewan Perundangan untuk persidangan pertama setiap sesi. Bagaimanapun, untuk tidak meneruskan sidang mesyuarat atau pembubaran Dewan
- B Undangan, melalui perkataan 'may' di dalam fasal 53(2), tidak terdapat kewajipan yang sama dikenakan ke atas DYMM. Pengeluaran pengisytiharan untuk tidak meneruskan sidang mesyuarat atau pembubaran Dewan Undangan adalah mengikut budibicara DYMM. Melalui pengisytiharan 1 Julai
- C 2009 DYMM dalam kata-kata yang jelas telah memanggil Dewan Undangan untuk mesyuarat pertama bagi sesi kedua. Keputusan untuk menentukan 9 Ogos 2009 sebagai mesyuarat pertama sesi kedua adalah keputusan DYMM. Kesan patut diberikan kepada perkataan-perkataan jelas Pengisytiharan
- D tersebut yang dikeluarkan oleh DYMM dalam melaksanakan kuasa-kuasa beliau di bawah fasal 53. Kedua-dua SPR dan mahkamah tidak mempunyai kebebasan untuk mengabaikan Pengisytiharan Diraja. Untuk berbuat demikian adalah untuk menyangkal arahan daripada DYMM.
- E (3) Yang arif hakim telah menolak pengeluaran writ *quo warranto* terhadap ADUN atas alasan bahawa fasal 132(3)(b) Perlembagaan Persekutuan mengecualikan ahli Dewan
- F Undangan Negeri daripada kategori 'perkhidmatan awam' seperti yang disebut di bawah fasal 132(1). Mahkamah ini bersetuju dengan yang arif hakim, oleh itu rayuan balas responden telah dibatalkan.

Case(s) referred to:

- G *Krishnadas Achutan Nair & Ors v. Maniyam Samykano* [1997] 1 CLJ 636
FC (*refd*)
Manokaram Subramaniam v. Ranjid Kaur Nata Singh [2008] 6 CLJ 209
FC (*refd*)
Mohd Noor Othman & Ors v. Hj Mohd Ismail Hj Ibrahim & Ors & Another Case [1988] 2 CLJ 597; [1988] 1 CLJ (Rep) 224 SC (*refd*)
- H **Legislation referred to:**
Laws of the Constitution of Kedah, arts. 2, 51, 53(1), (2), (3)
Federal Constitution, art. 132(3)(b)

(Civil Appeal No: W-01-386-2009)
- I For the appellant - Amarjeet Singh Serjit Singh (Suzana Atan with him) SFC
For the respondent - Hj Sulaiman Abdullah (Edmund Bon Tai Soon & Zulkarnain Luqman with him); M/s Chooi & Co

(Civil Appeal No: W-02-2654-2009)

For the appellant - Dato' Mohd Hafarizam Harun (Dato' Firoz Hussein Ahmad Jamaluddin with him); M/s Hafarizam Wan & Aisha Mubarak

For the respondent - Hj Sulaiman Abdullah (Edmund Bon Tai Soon & Zulkarnain Luqman with him); M/s Chooi & Co

[Appeal from High Court, Kuala Lumpur; Judicial Review No: R4-25-304-2009]

[Editor's note: For the High Court judgment, please see Dato' Dr Abd Isa Ismail v. Dato' Abu Hasan Sarif & Anor [2011] 6 CLJ 415.]

Reported by Suhainah Wahiduddin

JUDGMENT

Aziah Ali JCA:

[1] The appellant in Civil Appeal No. W-01-386-2009 the Election Commission (hereinafter referred to as "the EC"), and the appellant in Civil Appeal No. W-02-2654-2009 Dato' Abu Hasan bin Sarif, the State Assemblyman for the Kota Siputeh constituency of Kedah (hereinafter referred to as "the ADUN") appeal against the decision of the learned High Court Judge made in an application for judicial review filed by Dato' Dr. Abd. Isa bin Ismail who is the Speaker of the Kedah State Legislative Assembly, the respondent in both appeals.

Background

[2] The ADUN had been absent for the meetings of the State Assembly on 19 April 2009 and on 9 August 2009. The ADUN had submitted to the respondent an explanation and medical certificate for the period 9 August 2009-10 August 2009 but the respondent rejected the medical certificate and the explanation. The respondent took the position that these absences from two consecutive meetings of the Assembly were without leave of the respondent as Speaker as required by art. 51 of the Constitution of the State of Kedah ("the State Constitution") and that pursuant to the said article the Kota Siputeh State Seat had become vacant.

- A [3] Pursuant thereto, the respondent wrote a letter dated 17 August 2009 to the EC informing the EC that there was a vacancy in the Kota Siputeh State Seat. By a letter dated 1 September 2009 the EC replied amongst others that:
- B (a) the ADUN is still the ADUN for Kota Siputeh;
(b) the Seat is not vacant;
(c) the meetings which were not attended by the ADUN were not two consecutive meetings in one session within the meaning of art. 51 of the State Constitution but two meetings in different sessions, and
- C (d) the EC accepted the medical certificate tendered as explanation for the ADUN's absence from the meeting on 9 August 2009.
- D
- E [4] The EC's reply resulted in the application for judicial review. In the application for judicial review, as against the EC the respondent had sought for an order of *certiorari* to quash the EC's decision and/or action as per its letter dated 1 September 2009 and an order of *mandamus* to compel the EC to hold a by-election for the Kota Siputeh State Seat. Against the ADUN the respondent sought for orders which in effect are as follows:
- F (a) a writ of *quo warranto* to ask the ADUN to show cause and give confirmation how and under what basis/or authority that he is still the State Assemblyman for Kota Siputeh;
(b) a declaration that the ADUN is no longer the Kota Siputeh Assemblyman;
- G (c) a declaration that the Legislative Assembly of the State of Kedah for the constituency of Kota Siputeh (N3) is vacant, and
- H (d) a mandatory injunction preventing the ADUN and/or his agents from carrying out the responsibilities, function and duties as Kota Siputeh Assemblyman.

I The learned judge agreed with the respondent and held that the Assembly's meetings on 19 April 2009 and on 9 August 2009 were two consecutive meetings and therefore the ADUN's absences constituted absences for two consecutive meetings in the

same session of the Assembly. Applying art. 51 of the State Constitution the learned judge granted the declaratory order that the ADUN was no longer the Kota Siputeh Assemblyman and that the Kota Siputeh State Seat was vacant. Consequently the learned judge granted an order of *certiorari* to quash the decision of the EC and an order of *mandamus* to compel the EC to issue a Writ of Election and to hold a by-election. Both the EC and the ADUN are dissatisfied with the decision of the learned judge. Hence these appeals. The learned judge however declined to issue a writ of *quo warranto* upon her finding that a writ of *quo warranto* cannot be issued against the ADUN on the ground that art. 132(3)(b) of the Federal Constitution expressly excludes the office of a member of the Legislative Assembly of a State from the category of 'public services' as enumerated under art. 132(1). The respondent has cross appealed against this decision. Having heard submissions, by a unanimous decision, we allowed the appeals by the EC and the ADUN. Consequentially, the respondent's cross appeal was dismissed. We now give our reasons.

The EC's Case

[5] For the EC, learned Senior Federal counsel refers to the Proclamations issued by His Royal Highness ('HRH'), the Sultan of Kedah in exercise of the power conferred on HRH by art. 53 of the State Constitution and published in the Kedah Government Gazette dated 26 March 2009 and 30 July 2009 respectively. By the Proclamation issued by HRH dated 25 February 2009, and published in the Kedah Government Gazette dated 26 March 2009, HRH proclaimed the date 19 April 2009 as the date of the Fifth Meeting of the First Session of the State Legislative Assembly. The Proclamation reads *inter alia* as follows:

... WE AL-SULTAN ALMU'TASIMU BILLAHI MUHIBBUDDIN TUANKU ALHAJ ABDUL HALIM MU'ADZAM SHAH IBNI AL-MARHUM SULTAN BADLISHAH ... in exercise of the power conferred on US under Article 53 of the Laws of the Constitution of Kedah DO HEREBY SUMMON the Legislative Assembly and appoint 19th April 2009 corresponding to the 23rd Rabiulakhir 1430 at the hour of 9.00 in the forenoon as the date and time of the Fifth Meeting of the First Session of the TWELFTH Legislative Assembly of the State of Kedah Darul Aman ...

- A The Proclamation issued by HRH dated 1 July 2009 and published in the Kedah Government Gazette dated 30 July 2009 reads in the same vein but with the date 9 August 2009 being proclaimed by HRH as the date of the First Meeting of the Second Session of the Twelfth Legislative Assembly.
- B [6] Learned Senior Federal Counsel submits that the meeting on 19 April 2009 being the Fifth and last meeting of the First Session and, the meeting on 9 August 2009 being the First Meeting of the Second Session, are not 'two consecutive meetings' as envisaged by art. 51 of the State Constitution which reads as follows:
- C If any member of the Legislative Assembly is absent from the Assembly without leave of the Speaker for two consecutive meetings, his seat shall become vacant.
- D It is submitted that the phrase 'two consecutive meetings' is to be construed as two consecutive meetings in the same session. Thus, it is submitted that the ADUN was not absent for two consecutive meetings but rather he was absent for the Fifth Meeting of the First Session held on 19 April 2009 and the First Meeting of the Second Session held on 9 August 2009. Therefore,
- E it is contended that the failure of the ADUN to attend the meetings on 19 April 2009 and on 9 August 2009 was not absence from two consecutive meetings as contended by the respondent. Learned Senior Federal Counsel submits that the
- F Proclamation dated 1 July 2009 is clear in its terms and the summoning of the First Meeting of the Second Session is evidence that for all intent and purposes the First Session has been or is deemed prorogued.
- G **The Respondent's Case**
- H [7] For the respondent learned counsel submits that 'two consecutive meetings' in the State Constitution must be given its plain and ordinary meaning and can only mean one meeting following the earlier meeting in uninterrupted succession. In support counsel referred to the definition of 'consecutive' found in the *Shorter Oxford English Dictionary on Historical Principles* as "Following continuously: following each its predecessor in uninterrupted succession". Learned counsel submits that a 'session' will continue until it is dissolved or prorogued and refers
- I to the definition of 'session' under art. 2 of the State

Constitution. Counsel submits that there was no prorogation or dissolution of the Assembly after the Fifth Meeting of the First Session. Thus despite the Proclamation by HRH that the meeting on 9 August 2009 was the First Meeting of the Second Session, it is contended that the meeting on 9 August 2009 was held as part of the First Session. The respondent contends that the ADUN had failed to attend two consecutive meetings of the Assembly without notifying his absence to the Speaker or the Clerk of the Assembly as required under the State Constitution and the Kedah Standing Rules and Orders.

[8] The learned judge agreed with counsel for the respondent that applying the definition of 'consecutive' in its plain and ordinary meaning the Fifth Meeting of the First Session on 19 April 2009 and the First Meeting of the Second Session on 9 August 2009 were 'two consecutive meetings' within the meaning of art. 51 of the Kedah Constitution. The learned judge found that the meetings on 19 April 2009 and on 9 August 2009 were held in 'uninterrupted succession' in a single session.

[9] The learned judge disagreed with the learned Senior Federal Counsel that the Proclamation dated 1 July 2009 by which HRH proclaimed the date 9 August 2009 as the date of the First Meeting of the Second Session is deemed to have prorogued the First Session. The learned judge opined that it would be erroneous to assume that the Proclamation describing the meeting on 9 August 2009 as the First Meeting of the Second Session is evidence that the Assembly had been prorogued. Her Ladyship, though accepting that under art. 53(2) of the State Constitution the power to prorogue the Legislative Assembly is a discretionary power of HRH, is of the view that the prorogation of the Assembly cannot be inferred, implied or deemed but must be expressly exercised by HRH in the same manner that HRH does in exercising his power to dissolve the Assembly, and that is by issuing a Proclamation. Her Ladyship found that in the absence of evidence of prorogation, the meeting on 9 August 2009 though described in the Proclamation as the First Meeting of the Second Session was, in law, the Sixth Meeting of the First Session. The learned judge held that there was no Second Session. Thus, the learned judge agreed with the respondent that the ADUN was absent for two consecutive meetings in the same session.

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- A [10] Before us learned Senior Federal Counsel submits that the learned judge has erred in according a plain and ordinary meaning to the phrase 'two consecutive meetings' as proposed by the respondent and construing the said phrase in isolation and without regard to the definitions of 'meetings' and 'sessions' as provided under art. 2 as follows:

C "meeting" means any sitting or sittings of the Legislative Assembly commencing when the Assembly first meets after being summoned at any time and terminating when the Assembly is adjourned sine die or at the conclusion of a session without adjournment;

D "session" means the sittings of the Legislative Assembly commencing when the Assembly first meets after being constituted or after its prorogation or dissolution at any time, and terminating when the Assembly is prorogued or dissolved without having been prorogued.

- E Learned Senior Federal Counsel submits that these provisions when considered as a whole would show that 'two consecutive meetings' must be construed to mean two consecutive meetings in one session and not in separate sessions of the State Assembly. It is submitted that the last sitting in one session is the Assembly's last meeting of that session and the first meeting in the next session is the Assembly's first meeting of the new session. Thus, it is submitted that meetings can only consecutively exist in their respective sessions. The termination of a preceding session is an interruption of sequence.

- G [11] We agree with the learned Senior Federal Counsel that the meetings on 19 April 2009 and 9 August 2009 were not two consecutive meetings. We find that there was an interruption in their succession in the form of the Proclamation dated 1 July 2009 which, in proclaiming that the meeting on 9 August 2009 would be the First Meeting of the Second Session had, in effect, terminated the First Session of the Assembly. Further, we find from contemporaneous documents in the form of the letter dated 17 August 2009 written by the respondent himself to the ADUN which shows that the respondent accepted that the meeting on 19 April 2009 was the Fifth Meeting of the First Session and the meeting on 9 August 2009 is the First Meeting of the Second Session. There is also the letter dated 12 October 2009 written by the Secretary of the State Legislative Assembly giving notice

that the Budget 2010 meeting of the Assembly would be held on 17 November 2009 in the Assembly's Second Meeting of the Second Session. Therefore we agree with the EC that the ADUN had not been absent for two consecutive meetings. Consequently his seat had not become vacant.

[12] The learned judge found no evidence of prorogation of the First Session. Her Ladyship is of the view that the prorogation of the Assembly cannot be inferred, implied or deemed but must be expressly exercised by HRH. With respect we are of a different view. Article 53(1) and (2) of the State Constitution provide as follows:

(1) The Ruler shall from time to time summon the Legislative Assembly and shall not allow six months to elapse between the last sitting in one session and the date appointed for its first sitting in the next session.

(2) The Ruler may prorogue or dissolve the Legislative Assembly.

In *Mohd Noor Othman & Ors v. Hj Mohd Ismail Hj Ibrahim & Ors & Another Case* [1988] 2 CLJ 597; [1988] 1 CLJ (Rep) 224 Hashim Yeop Sani SCJ said:

It is trite law that where the words of a statute are clear, there is no room for the court to go beyond the expressed language of the statute

It is apparent that whilst the word 'shall' appears in art. 53(1), in art. 53(2) the word 'may' is used. In the case of *Krishnadas Achutan Nair & Ors v. Maniyam Samykano* [1997] 1 CLJ 636 the Federal Court said *inter alia* as follows:

The function of a Court when construing an Act of Parliament is to interpret the statute in order to ascertain legislative intent primarily by reference to the words appearing in the particular enactment. *Prima facie*, every word appearing in an Act must bear some meaning. For Parliament does not legislate in vain by the use of meaningless words and phrases. A judicial interpreter is therefore not entitled to disregard words used in a statute or subsidiary legislation or to treat them as superfluous or insignificant. It must be borne in mind that:

As a general rule a Court will adopt that construction of a statute which will give some effect to all of the words which it contains. per Gibbs J in *Beckwith v. R.* [1976] 12 ALR 333, at p. 337.

- A In *Manokaram Subramaniam v. Ranjid Kaur Nata Singh* [2008] 6 CLJ 209, Arifin Zakaria FCJ (now CJ) said as follows:

B It is a principle of statutory interpretation that when the legislature uses different language in the same connection, in different parts of the statute, it is presumed that a different meaning and effect is intended, and if different language is used in contiguous provisions, it must be presumed to have done so designedly. (*N.S. Bindrai's Interpretation of Statutes*, 8th edn. p 275). The right approach to interpretation of statute is as stated by Higgins J in *Amalgamated Society of Adelaide Steamship Co. Ltd* [1920] 28 CLR 129 at p. 161-162 which reads:

C The fundamental rule of interpretation, to which all others are subordinate, is that a statute is to be expounded according to the intent of the Parliament that made it, and that intention has to be found by an examination of the language used in the statute as a whole. The question is, what does the language mean; and when we find what the language means in its ordinary and natural sense it is our duty to obey that meaning even if we think the result to be inconvenient, impolite or improbable.

E [13] Insofar as art. 53 is concerned, it is our considered opinion that the use of the word 'shall' in art. 53(1) and the word 'may' in art. 53(2) is by design and intended to be so interpreted. We are of the view that by the word 'shall' appearing in art. 53(1) an obligation is imposed on HRH to summon the Legislative Assembly for the first sitting for each session. However for the prorogation or dissolution of the Assembly, we are of the view that by the use of the word 'may' in art. 53(2), there is no similar obligation imposed on HRH. In other words the issuance of a proclamation to prorogue or dissolve the Assembly is at the discretion of HRH.

F For the reasons stated, we are unable to agree with the learned judge that HRH must issue a Proclamation to prorogue the Assembly. We find art. 53(2) imposes no such obligation on HRH. However we venture to add that in the case of dissolution of the Assembly for reasons other than the expiry of the five-year term as specified under art. 53(3), a proclamation of such dissolution would be rendered necessary.

H [14] By the Proclamation dated 1 July 2009 HRH in clear words had summoned the Legislative Assembly to its First Meeting of the Second Session. The decision to appoint 9 August 2009 as the First Meeting of the Second Session was the decision of HRH.

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We are of the view that effect ought to be given to the clear words of the said Proclamation which was issued by HRH in exercise of his powers under art. 53. We are of the considered opinion that neither the EC nor the court is at liberty to disregard the Royal Proclamation. To do so would be to negate the command of HRH that the sitting of the Assembly on 9 August 2009 shall be the Assembly's First Meeting of the Second Session.

[15] Pursuant to our findings above, we find no necessity to consider the cross appeal. However, we take the opportunity to state that we are in full agreement with the learned judge that the writ of *quo warranto* cannot be issued against the ADUN for the reasons given by Her Ladyship. We therefore allowed the appeals and dismissed the cross appeal. The decision of the High Court is thereby set aside and we ordered the ADUN to be reinstated to his position. In respect of Civil Appeal No. W-01-386-2009 the EC did not pray for costs. In respect of Civil Appeal No. W-02-2654-2009 we awarded costs of RM5,000 to the appellant.

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